Dear Edward,

THE MARITIME TRANSPORT ACCESS TO TRADE AND CABOTAGE (REVOCATION) (EU EXIT) REGULATIONS 2018

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the Statutory Instrument (SI) which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in these SI. This is one in a series of such notifications that myself and Ministerial colleagues will be sending to Parliamentary committees over the coming weeks.

The proposals revoke EU laws which either deal with market access (e.g. Council Regulation 3577/92) or with action against anti-competitive practices (e.g. Council Regulation 4058/86). Council Regulation 3577/92 on maritime cabotage affects an area of devolved responsibility. This SI is believed to fall into Category A, as it is does not seek to make a policy change.
Please note that the date on which the UK Government proposes to lay these regulations is 29 October 2018. I realise that with the October recess this will leave less than the 28 days for consideration of the notification by the Scottish Parliament. However, I would appreciate it if you could consider this notification as soon as possible.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

MICHAEL MATHESON
NOTIFICATION TO THE SCOTTISH PARLIAMENT

The name of the instrument in question (if known) or a title describing the policy area

Brief explanation of law that the proposals amend
The proposals revoke EU laws which either deal with market access (e.g. Council Regulation 3577/92) or with action against anti-competitive practices (e.g. Council Regulation 4058/86).

Summary of the proposals and how these correct deficiencies
The SI will revoke a number of pieces of EU legislation including Council Regulation 3577/92 on maritime cabotage which affects an area of devolved responsibility.

An explanation of why the change is considered necessary
This SI deals with legislation related to market access for maritime transport services and is being made under powers in the European Union (Withdrawal) Act 2018, where the Protocol on EU Exit UK SIs applies. It revokes legislation which would be redundant after the UK leaves the EU or which, if incorporated into UK law, would create express rights for the remaining Member States which would not necessarily be reciprocated. The redundant legislation includes regulations which provide for EU action when a Member State is subject to anti-competitive measures by a third country. Such remedies would no longer be available to the UK after we leave the EU.

Legislation relating to reciprocal rights includes Council Regulation 3577/92, which gives rights to EU shipping companies to operate cabotage services (the provision of maritime transport services by one country between ports in another country) in other Member States. Since the UK operates a liberalised cabotage market, and has no intention currently of restricting cabotage in the future, revoking the legislation does not have any practical effect.

Scottish Government categorisation of significance of proposals
Category A – lowest level of scrutiny as there is no policy change being made but a simple revocation

Impact on devolved areas (If you have given any consideration of this so far)
Council Regulation 3577/92 deals with rights to offer maritime cabotage services in other Member States. The Regulation allows Member States to impose public sector obligations or agree public sector contracts with those that are exercising their rights under the Regulation. Policy on financial assistance to shipping services within Scotland is devolved.

The revocation of the Regulation is unlikely to have a practical effect in Scotland. It will not limit Ministers freedom of action in relation to financial assistance to shipping.

Summary of stakeholder engagement/consultation
The UK Government consulted stakeholders informally on EU exit maritime issues including those related to market access. This confirmed the view that market access generally was not a significant concern for stakeholders because the industry is regulated internationally and it is not generally in states’ interests to restrict shipping access to their ports. No additional stakeholder engagement/consultation has been carried out as the proposed changes should not affect users.
A note of other impact assessments, (if available)
The UK Government did not produce an impact assessment on this proposal because it is not expected to have an impact on business.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation
Scottish officials have been in contact with UK Government officials counterparts to discuss the legislative changes and any potential consequences. Given that there is no policy change being made but a simple revocation, which is an approach that we are content with in policy terms, it is more practical and a more efficient use of time for the revocation of this provision in Scotland to be included in this UK wide SI.

Given the minimal impact revoking the Maritime Cabotage Regulation would have, and the lack of rationale for Scottish legislation in this case, it was the opinion of officials that UK-wide legislation was the most appropriate course of action in this case.

Intended laying date (if known) of SI/SIs
29 October 2018

If the Scottish Parliament will not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?
In order for UK Govt to lay this SI as planned on 29 October, given Scottish Parliamentary Recess in October, less than 28 days are now available.

Information about any time dependency associated with the proposal
The deficiencies need to be fixed before EU exit day.

Any significant financial implications
None